



Billing Code: 5001-06

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 320

[Docket ID: DoD-2013-OS-0215]

Privacy Act; Implementation

**AGENCY:** National Geospatial-Intelligence Agency, DoD.

**ACTION:** Direct final rule with request for comments.

**SUMMARY:** National Geospatial-Intelligence Agency (NGA) is updating the NGA Privacy Act Program by adding the (k)(2) exemption to accurately describe the basis for exempting the records in the system of records notice NGA-008, National Geospatial-Intelligence Agency Polygraph Records System. In this rulemaking, the NGA proposes to exempt portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil and administrative enforcement requirements. This direct final rule makes non-substantive changes to the NGA Program rules. These changes will allow the Department to add exemption rules to the NGA Privacy Program rules that will exempt applicable Department records and/or material from certain portions of the Privacy Act. This will improve the efficiency and effectiveness of DoD's program by ensuring the integrity of the security and counterintelligence records by the NGA and the Department of Defense.

This rule is being published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

**DATES:** The rule will be effective on **[INSERT DATE 70 DAYS AFTER THE DATE OF PUBLICATION IN FEDERAL REGISTER]** unless adverse comment is received by **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN FEDERAL REGISTER]**. If adverse comment is received, the Department of Defense will publish a timely withdrawal of the rule in the Federal Register.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- \* Federal Rulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

- \* Mail: Federal Docket Management System Office, 4800 Mark Center Drive; East Tower, 2<sup>nd</sup> Floor, Suite 02G09, Alexandria, VA 22350-3100.

Instructions: All submissions received must include the agency name and docket number for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they

are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** National Geospatial-Intelligence Agency (NGA), ATTN: Security Specialist, Mission Support, MSRS P-12, 7500 GEOINT Drive, Springfield, VA 22150.

**SUPPLEMENTARY INFORMATION:**

**Direct Final Rule and Significant Adverse Comments**

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves non-substantive changes dealing with DoD's management of its Privacy Programs. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will withdraw this direct final rule by publishing a notice in the Federal Register. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

**Executive Order 12866, "Regulatory Planning and Review" and  
Executive Order 13563, "Improving Regulation and Regulatory  
Review"**

It has been determined that this rule is not a significant rule. This rule does not (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

**Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C.  
Chapter 6)**

This rule will not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense. A Regulatory Flexibility Analysis is not required.

**Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)**

This rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

**Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"**

These amendments do not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

**Executive Order 13132, "Federalism"**

These amendments do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, no Federalism assessment is required.

List of Subjects in 32 CFR Part 320

Privacy.

Accordingly, 32 CFR part 320 is amended as follows:

**PART 320-NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY (NGA) PRIVACY**

1. The authority citation for 32 CFR part 320 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1986 (5 U.S.C. 552a).

2. Section 320.12 is amended by adding paragraph (e) to read as follows:

**§320.12 Exemptions.**

\* \* \* \* \*

(e) *System identifier and name:* NGA-008, National Geospatial-Intelligence Agency Polygraph Records System.

(1) Exemptions: Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source.

Note to paragraph (e)(1): When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(2) Authority: 5 U.S.C. 552a (k)(2).

(3) Reasons: Pursuant to 5 U.S.C. 552a (k) (2), the Director of NGA has exempted this system from the following provisions of the Privacy Act, subject to the limitation set forth in 5 U.S.C. 552a(c) (3); (d); (e) (1), (e) (4) (G), (e) (4) (H), (e) (4) (I); and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(i) From subsection (c) (3) and (c) (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of NGA as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(ii) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of

that investigation and reveal investigative interest on the part of NGA or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(iii) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(iv) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby



interfering with that investigation and related law enforcement activities.

(v) From subsection (e) (3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(vi) From subsections (e) (4) (G), (e) (4) (H), and (e) (4) (I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore NGA is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(vii) From subsection (e) (5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e) (5) would preclude NGA personnel

from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(viii) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with NGA's ability to cooperate with law enforcement who would obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(ix) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: November 6, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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